IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.512 of 2003

Reserved on : April 4, 2007.

Decided on : 10.4.2007

Sanjay Kumar **....Appellant.**

VERSUS

State of Himachal Pradesh **....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the Appellant : Mr. V.K. Verma, Advocates.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

This appeal is directed against the judgment of the Sessions Court whereby appellant has been convicted of offence of murder, under Section 302 IPC, and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months.

2. Appellant's grievance is that the evidence on record does not prove the charge of murder, but the trial Court has mis-appreciated and misconstrued the evidence. In the alternative his plea is that it is not a case of murder but a case of culpable homicide not amounting to murder, punishable under second part of Section 304 IPC.

Whether the reporters of the local papers may be allowed to see the Judgment?

3. Appellant was charged with and tried for an offence under Section 302 IPC on the allegations that on 8.10.2001 at about 7.30 p.m., he stabbed deceased Kartar Chand in the abdomen, as a result of which he died on 10.10.2001. The prosecution version may be summarized thus. On 8.10.2001, PW-3 Bipin Kumar and his cousin Deep Kumar @ Kuldeep Kumar PW-4 were going towards their house. When they were passing in front of the shop of one Rakesh, appellant Sanjay Kumar, hereinafter called accused, accompanied by his brother Parveen Kumar (PW-1) picked a quarrel with them and then engaged them in a fight. In the meanwhile, deceased Kartar Chand came from behind in taxi-jeep on which he was employed as conductor. Deceased Kartar Chand alighted from the taxi-jeep and intervened in a bid to disentangle the fighting persons. Accused then took out a knife and dealt a blow in the abdomen of Kartar Chand, as a result of which Kartar Chand's intestine came out. Accused and his brother DW-1 Parveen Kumar disappeared from the scene immediately after inflicting the stab injury. Deceased was taken to Health Centre at Nagrota Bagwan where his wound was stitched. Doctor informed the Police telephonically that a man having sustained stab wound in a fight had been brought to the Primary Health Centre. That information was entered in the *Rojnamcha* (Daily Diary). PW-11 ASI Dalbir Kumar rushed to the Primary Health Centre. After ascertaining from the Doctor, in writing, that the deceased was conscious and fit to make statement, he recorded his statement, under Section 154 Cr.P.C. (Ex. PW-3/A). The deceased stated that he had been given stab wound by the accused when he tried to rescue PW-3 Bipin Kumar and PW-4

Kuldeep Kumar from the clutches of the accused and his brother Parveen Kumar. Kartar Chand, after the stitching of his wound, was referred to Zonal Hospital Dharamshala for further treatment. There he died on 10.10.2001 at 4.45 p.m. After the death of Kartar Chand, the case, which was initially registered under Section 324 IPC, was converted into one under Section 302 IPC. Postmortem examination of the dead body was got conducted. Before that the medico legal examination of the deceased was conducted at Primary Health Centre, Nagrota Bagwan on 8.10.2001, soon after his having been taken to that Centre. A stab wound was noticed in the course of the medical examination on the left side of paraumbilical region which was 3 cm in length. The wound was opined to have been caused with some sharp edged weapon. The Doctor, who conducted the postmortem examination, gave the opinion that the cause of death was asphyxia septicemic shock and peritonitis due to ante mortem abdominal stab injury. The Doctor also opined that the injury was sufficient in the ordinary course of nature to cause death. During the course of investigation, accused allegedly produced the knife (sketch of which is Ex. PW-4/B) with which the injury was caused.

4. During the course of trial, prosecution examined PW-3 Bipin Kumar and PW-4 Kuldeep Kumar @ Deep Kumar, both of whom testified that the accused inflicted a stab wound, by means of a knife, in the abdomen of the deceased. PW-2 Dr. Rajesh Guleri, who conducted the medico legal examination of the deceased on 8.10.2001, when he was taken to Primary Health Centre, Nagrota Bagwan in an injured state, testified that he noticed an incised injury in left paraumbilical region 3 cm in length**.** He also stated that he

informed the Police telephonically and that one Police Officer, who reached the Health Centre in response to his telephonic call, submitted to him an application, Ex. PW-2/B, for ascertaining whether Kartar Chand was fit to make statement and that he gave the opinion that he was fit to do so. PW-1 ASI Dalbir Kumar testified that he recorded the statement, Ex. PW-3/A**,** under Section 154 Cr.P.C., of the deceased on 8.10.2001 at Primary Health Centre Nagrota Bagwan and at that time Kartar Chand was conscious and fit to make statement. As per this statement, Ex. PW-3/A, Kartar Chand stated that he had been inflicted the stab wound by the accused. This statement is relevant, as dying declaration, under Section 32 of Evidence Act.

5. Defence plea is that eight-ten persons were quarrelling and fighting on the spot and that the deceased who reached the spot by a jeep intervened and someone from amongst the fighting persons stabbed him and in the meanwhile the accused and his brother DW-1 Parveen Kumar also reached the spot and they rendered help in carrying Kartar Chand to the Health Centre at Nagrota Bagwan.

6. DW-1 Parveen Kumar has been examined to prove the aforesaid plea. He has stated that he and the accused while passing by the spot noticed ten-fifteen persons fighting among themselves and that Kartar deceased, who went running towards the spot, after overtaking them started disengaging the fighting persons and in that process somebody hit him with a sharp edged weapon and that he and the accused then went to see as to what had happened. He says that Ram Kishan, Shopkeeper, and Up-Pradhan Kuldeep carried the

deceased to the hospital in a vehicle. He did not say that he or the accused rendered any help in taking the deceased to the hospital.

7. The defence plea appears to be an afterthought. The deceased made statement, under Section 154 Cr.P.C., Ex. PW-3/A, within a few hours of the occurrence. Per this statement, when the dceased reached the spot around 7.45 p.m. only four persons, i.e. accused Sanjay, his brother Parveen, PW-3 Bipin and PW-4 Deep Kumar were fighting and that when he tried to disengage them accused Sanjay Kumar, who was holding a knife, stabbed him in the abdomen. He also stated to the Police that he had no enmity with the accused, but the latter stabbed him only because he tried to rescue PW-3 Bipin Kumar and PW-4 Deep Kumar from his (accused's) and his brother's clutches. The contents of Ex.PW-3/A corroborate the testimony of PW-3 Bipin Kumar and PW-4 Deep Kumar@ Kuldeep Kumar and the testimony of these witnesses, as corroborated by Ex. PW-3/A, falsify the aforesaid defence plea.

8. It was stated on behalf of the accused that though Ex. PW-3/A, statement under Section 154 Cr.P.C., purports to have been recorded at Health Centre, Nagrota Bagwan, after obtaining the opinion of the Doctor that the injured (Kartar Chand) was fit to make statement, it is not attested by the Doctor nor was he associated by the Police Officer, i.e. PW-11 Dalbir Kumar, to witness the making and the recording of the statement. It may be pointed out that at the time of recording the statement, Ex. PW-3/A, the Police Officer concerned considered the matter to be not very serious, because in his endorsement below the said statement, which he recorded for the registration of the case he mentioned that offence under Section 324

IPC appeared to have been committed. That means PW-1 Dalbir Kumar thought that this was a case of simple hurt caused with a sharp edged weapon. If he had any idea or even inkling that the injury could result in the death of the injured and the statement in that even would become relevant under Section 32 of Indian Evidence Act, he might have associated the Doctor and other witnesses.

9. The evidence, as discussed hereinabove, proves to the hilt that Kartar Chand died because of the stab wound in the abdomen, inflicted by the accused with a knife.

10. Learned counsel for the accused-appellant then submitted that the facts and the circumstances of the case rule out the requisite *mens rea* on the part of the accused for committing the offence of murder and, therefore, the accused be acquitted of the charge of murder and convicted under the second part of Section 304 IPC. On the other hand, the learned Additional Advocate General argued that the case was covered by clause thirdly of Section 300 IPC as the site and the nature of the injury and the weapon used to inflict it conclusively prove that the accused intended to cause such bodily injury as was sufficient, in the ordinary course of nature, to cause death.

11. We have considered the submission of the learned counsel for the accused and the counter submission of the learned Additional Advocate General, in the light of the evidence on record. The Doctor, who conducted the postmortem examination, namely PW-1 Dr. D.P. Swami, stated in no uncertain terms that the abdominal injuries (layers and to jejunum) were sufficient, in the ordinary course of nature to cause death. This part of the testimony

of the Doctor has remained unchallenged. The said testimony of the Doctor proves that the injury was sufficient in the ordinary course of nature to cause death.

12. However, merely on the basis of the nature of the injury, that is to say its being sufficient in the ordinary course of nature to cause death, the requisite intent of the accused cannot be inferred. In the present case the weapon of offence is a knife having 14 cm long blade. The stab wound, as per testimony of PW-1 Dr. D.P. Swami, was 5 cm deep. The sketch of the knife, Ex. PW-4/B, shows that the blade of the knife has a curve which starting from the tip goes upto 6 cm. The depth of the wound suggests that the knife penetrated 5 cm at the most. In other words, it did not penetrate even the whole length of curved part of the blade. As the abdomen has soft skin and soft wall underlying, stabbing by means of a knife, like the one used in the present case, even with minimal force, may cause 5 cm deep wound. The injury was inflicted when the deceased tried to get witnesses PW-3 Bipin Kumar and PW-4 Deep Kumar released from the clutches of the accused and his brother.

13. It appears that the knife was used by the accused-appellant to scare-away the deceased when the latter tried to get the abovenamed witnesses released from his (accused's) and his brother's clutches. Had there been any intention to cause death or a bodily injury likely to cause death in the ordinary course of nature, the knife could have been used with more force.

14. In *AIR 1981 SUPREME COURT 1552, Jagrup Singh v. The State of Haryana,* whre the deceased, had been dealt a single blow from the blunt side of a *Gandasa*, which resulted in fracture of

skull from the lower and the anterior part of parietal bone injuring the middle meningeal artery near its entrance into the skull and traversing medially across the mid-line and extending slightly to the left of mid-line and also resulting in 3" X 3" haematoma (extra-dural) overlying the parietal and temporal lobes of brain on right side, the Hon'ble Supreme Court held that looking to the totality of the evidence, it would not be possible to come to the conclusion that the accused intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. It was observed that even if a man is hit with the blunt side of a *Gandasa* on the head, with sufficient force, that is bound to cause death. It was further held that there could be no doubt that the *Gandasa* was used with certain amount of force to cause cerebral compression but that by itself was not sufficient to raise an inference that the accused intended to cause such bodily injury as was sufficient to cause death. The matter was held not to fall within clause thirdly of Section 300 IPC, but the second part of Section 304 IPC.

15. Again, in *AIR 1983 SUPREME COURT 284, Jawahar Lal and another v. State of Punjab,* a solitary blow of knife was inflicted on the chest of the deceased by the accused following trivial quarrel to which the deceased was not party (as in the present case) and no attempt was made to inflict a second blow and the solitary blow that was given on the chest resulted in death, it was held that the case was not covered by clause thirdly and, therefore, it was not a case of murder, punishable under Section 302 IPC, but a case of culpable homicide not amounting to murder, punishable under second part of Section 304 IPC.

16. In another case *Jagtar Singh v. State of Punjab, AIR 1983 SUPREME COURT 463,* the deceased was stabbed in the chest and the weapon pierced inside the chest cavity causing injury to the heart which was sufficient in the ordinary course of nature to cause death, it was held that the conclusion arrived at by the High Court that the case was covered by clause thirdly of Section 300 IPC, was doubtful. Consequently, the conviction was converted from 302 IPC to 304 IPC, second part.

17. In *(1981) 4 Supreme Court Cases 245, Kulwant Rai v. State of Punjab*, following a short quarrel deceased was dealt a blow of dagger, which landed in epigastrium area. It was held that the case was not covered by clause thirdly of Section 300 IPC but by second part of Section 304 IPC.

18. In the present case, a fight was going on between two groups, each comprising of two men. The deceased intervened. He was given a single blow of knife in the abdomen. The blow caused only 5 cm deep injury in spite of the fact that the abdominal wall is very soft and tender. No attempt was made to inflict any other injury. Rather immediately after inflicting the injury the accused and his brother DW-1 Parveen Kumar ran away from the spot. All these facts are indicative that the accused-appellant did not intend to cause an injury that was sufficient in the ordinary course of nature to cause death.

19. As a result of the above discussion, appeal is partly accepted. Conviction of the accused-appellant under Section 302 IPC and the sentence awarded for the said offence by the trial Court are set aside. Instead, the accused-appellant is convicted under

Section 304 IPC, second part, and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.3,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months.

(Surjit Singh), J.

April 10, 2007(sd) **(Sanjay Karol), J.**